

Message Text

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ACTION EB-11

INFO OCT-01 ARA-16 ISO-00 L-03 COME-00 TRSE-00 JUSE-00

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R 271520Z SEP 73

FM AMEMBASSY PORT AU PRINCE
TO SECSTATE WASHDC 7048

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E.O. 11652: N/A

TAGS: PFOR, PGOV, EFIN, HA

SUBJECT: GOH POSITION ON BYERS/AERO TRADE SUIT IN US DISTRICT COURT

THERE FOLLOWS INFORMAL EMBASSY TRANSLATION OF FOREIGN OFFICE
NOTE ON SUBJECT:

DEPARTMENT OF FOREIGN AFFAIRS
REPUBLIC OF HAITI
PORT-AU-PRINCE SEPTEMBER 26, 1973
SCT/274
MR. CHARGE D'AFFAIRES A.I.

I HAVE THE HONOR TO INFORM YOUR EXCELLENCY THAT AS A RESULT
OF A LAWSUIT UNDERTAKEN BY AEROTRADE INTERNATIONAL, INC., A
FLORIDA COMPANY OF WHICH MR. JAMES BYERS IS PRESIDENT, AGAINST
THE GOVERNMENT OF THE REPUBLIC OF HAITI, FOR AN AMOUNT OF
\$867,000 PLUS INTEREST, THE LATTER HAS BEEN INFORMED THAT ON
AUGUST 21, 1973 JUDGE WEINFELD OF "UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK" ORDERED THE SEIZURE OF FUNDS
BELONGING TO THE HAITIAN GOVERNMENT AND CURRENTLY IN THE
FIRST NATIONAL CITY BANK OF NEW YORK UNTIL THE PAYMENT OF
\$867,000 WITH INTEREST. IT WAS ALSO ORDERED THAT THE SUM
OF COSTS AND EXPENSES OF THE ACTION OF THE SAID COMPLAINANT
BE AND REMAINED FIXED AT THE SUM OF \$40,000 OF WHICH \$35,000
WOULD BE PAID TO THE DEFENDANT TO COVER THE COSTS OF THE TRIAL
THAT THE LATTER WOULD HAVE AGREED TO IN THE CASE THAT JUDGMENT
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WERE RENDERED IN HIS FAVOR OR IF IT IS FINALLY DECIDED THAT

THE COMPLAINANTS ARE NOT ENTITLED TO SEIZURE OF THE PROPERTY OF THE DEFENDANT. THE BALANCE OF \$5,000 WOULD SERVE TO COVER THE COURT OFFICER'S FEES. FINALLY THE SHERIFF OF THE CITY OF NEW YORK OR OF ANY COUNTY OF NEW YORK STATE OR ANY UNITED STATES MARSHAL IS TO LEVY IN HIS JURISDICTION AT ANY TIME BEFORE FINAL JUDGMENT UPON SUCH PROPERTY IN WHICH THE DEFENDANT HAS AN INTEREST AND UPON SUCH DEBTS OWING TO THE DEFENDANT AS WILL SATISFY THE PLAINTIFF'S DEMAND IN THE COMPLAINT, TOGETHER WITH PROBABLE INTEREST, COSTS AND THE SAID OFFICER'S FEES AND EXPENSES REQUIRED BY LAW.

THE HAITIAN GOVERNMENT MUST NOW PROVIDE THE FOLLOWING DETAILS:

1. THE ESSENTIAL PART OF THE COMPLAINT BROUGHT BY THE COMPLAINANTS AGAINST THE GOVERNMENT OF THE REPUBLIC OF HAITI DEALS WITH THE CONTRACT SIGNED FEBRUARY 7, 1972 FOR THE ACQUISITION OF SIX (6) PATROL BOATS AND SIX (6) SIKORSKY S-58 HELICOPTERS PROVIDED WITH THE NECESSARY EQUIPMENT FOR THEIR OPERATION (RADIO, RADAR FOR THE SUM OF \$97,155.00) ARMAMENT (\$239,410) AND SPARE PARTS (\$652,445). THE ONLY CLAUSES OF THIS CONTRACT WHICH HAVE BEEN RESPECTED ARE THOSE RELATING TO THE OBLIGATIONS OF THE HAITIAN GOVERNMENT MENTIONED IN PARAGRAPH II OF THE AGREEMENT AS IS ATTESTED BY THE NOTICE OF RECEIPT OF FUNDS SUBMITTED BY MR. BYERS HIMSELF. THE COMPLAINANTS WERE TO DELIVER WITHIN SIX MONTHS FROM JANUARY 20, 1972 THE SIX BOATS AND THE SIX S-58 HELICOPTERS. THE FIRST PAYMENT OF \$400,000 HAVING BEEN MADE FEBRUARY 7, 1972 THE HAITIAN GOVERNMENT EXPECTED TO RECEIVE THE TWELVE UNITS BY AUGUST 7 OF THE SAME YEAR AT THE LATEST IN THE ABSENCE OF A VALID EXPLANATION FOR ANY DELAY WHICH MIGHT OCCUR. THREE MONTHS AFTER THIS DUE DELIVERY DATE, ONLY 4 HELICOPTERS AND 2 BOATS WERE DELIVERED (SEE PARAGRAPH I (B) AND II (B) OF THE CONTRACT A COPY OF WHICH IS ATTACHED.) AT THE BEGINNING OF JANUARY 1973, MR. JAMES BYERS REITERATED IN THE NAME OF AEROTRADE HIS PROMISES OF OVERALL DELIVERY ON CONDITION THAT THE HAITIAN GOVERNMENT AGREE TO PAY THREE MONTHS' INSTALMENTS AT ONE TIME. AN AMOUNT OF \$198,000 COVERING OCTOBER, NOVEMBER AND DECEMBER WAS DELIVERED TO MR. BYERS JANUARY 10 AND 21 DAYS LATER, THAT IS, JANUARY 31

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ANOTHER SUM OF \$66,000 WAS PAID HIM, FOR A TOTAL OF \$264,000 FOR THE MONTH OF JANUARY 1973 ALONE. (SEE DOCUMENT NOTE OF RECEIPT OF FUNDS BY MR. BYERS).

DESPITE THE FACT THAT AEROTRADE HAD NOT YET DELIVERED THE TOTALITY OF THE ORDER, THE HAITIAN GOVERNMENT PAID IT JULY 2, 1973 THE AMORTIZATION FOR THE MONTH OF JUNE 1973. JULY 30, 1973, THE HAITIAN FOREIGN OFFICE RECEIVED A NOTE

NO. 172 FROM THE AMERICAN EMBASSY IN HAITI INFORMING IT THAT AN AMERICAN COMPANY, SWIFTSHIPS INC., WITH WHICH THE HAITIAN GOVERNMENT HAD NEVER HAD A CONTRACT, CLAIMED THE PAYMENT OF A DEBT OF \$676,000 UNPAID ON THE ORDERS THAT MR. BYERS HAD PLACED WITH IT. AT THAT TIME THE HAITIAN GOVERNMENT DEFINITELY DECIDED ABOUT THE MORALITY AND THE HONESTY OF AEROTRADE INTERNATIONAL COMPANY DECIDED TO BREAK OFF ALL CONTACT WITH MR. BYERS WHOM IT BLAMED NOTABLY FOR:

A) THE NON-DELIVERY AFTER EIGHTEEN (18) MONTHS OF THE TOTALITY OF THE MATERIAL WHICH SHOULD HAVE BEEN DELIVERED IN JULY 1972.

B) THE FACT THAT THE FIVE (5) H-34 HELICOPTERS DELIVERED HAVE A UNIT VALUE OF ABOUT \$85,000 WHILE THE SIKORSKY S-58 HELICOPTERS OF SUPERIOR QUALITY PROVIDED FOR IN THE CONTRACT WERE PAID FOR AT \$126,550 EACH.

C) THAT THE SPARE PARTS FOR EACH HELICOPTER OF A VALUE OF \$43,387.80 WERE NOT DELIVERED.

D) THAT THE SUPPORT EQUIPMENT OF A VALUE OF \$65,353 FOR EACH BOAT WAS ALSO NOT DELIVERED.

E) THAT THE HAITIAN GOVERNMENT HAD BEEN OBLIGED TO SPEND \$120,340 OF ITS OWN FUNDS FOR THE PAYMENT OF PERSONNEL TO ASSURE THE TRAINING OF HAITIAN PERSONNEL AND THE MAINTENANCE OF THE AIRCRAFT BOUGHT WHEREAS IN THE CONTRACT THERE IS PROVIDED AN AMOUNT OF \$243,845 THAT AEROTRADE WAS TO SPEND FOR THIS PURPOSE.
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ACTION EB-11

INFO OCT-01 ARA-16 ISO-00 L-03 COME-00 TRSE-00 JUSE-00

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F) IT MUST ALSO BE RECALLED THAT THE HAITIAN GOVERNMENT PAID \$400,000 TO AEROTRADE UNDER COVER OF CONTRACT SIGNED FOR THE PURCHASE OF 10 F-86 AIRPLANES, A CONTRACT WHICH WAS LATER REVOKED BY COMMON AGREEMENT.

IN SUMMARY THE HAITIAN GOVERNMENT RECEIVED:

3 BOATS AT \$225,333	\$675,999
5 HELICOPTERS AT \$85,000	425,000
RADIO AND RADAR FOR 8 UNITS	64,770
DELIVERY MF 8 UNITS AT \$3,815	30,520

OY	\$1,196,289

ON ITS SIDE THE HAITIAN GOVERNMENT PAID \$1,724,000 (SEE DOCUMENTS SUBMITTED BY MR. BYERS).

THUS THE GOVERNMENT OF THE REPUBLIC OF HAITI RECEIVED MATERIAL WHOSE OVERALL VALUE IS ESTIMATED AT \$1,196,289 AND HAS ALREADY PAID AEROTRADE INC., \$1,724,000, WHICH MAKES A DIFFERENCE IN ITS FAVOR OF \$527,711. IN ADDING TO THAT AMOUNT THE CHECK FOR \$400,000 RECEIVED ON THE CONTRACT WHICH WAS ANNULLED FOR THE PURCHASE OF F-86 AIRPLANES, AEROTRADE INCORPORATED IS IN DEBT TO THE HAITIA GOVERNMENT IN THE AMOUNT OF \$927,711.

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2. IT SHOULD BE NOTED THAT AEROTRADE CORPORATION AND MR. JAMES BYERS HAVE NEVER BEEN EMPOWERED BY THE HAITIAN GOVERNMENT TO ACT IN ITS NAME IN THE CAPACITY OF "PURCHASING AGENT". THEY HAVE NEVER RECEIVED REMUNERATION FOR THEIR SERVICES. THE PRO-FORMA INVOICES WHICH THEY HAVE DRAWN UP HAVE BEEN BUILT IN THEIR IMAGINATION FOR ARTICLES WHICH THE HAITIAN GOVERNMENT HAS NEITHER ORDERED NOR RECEIVED. SUCH IS ABOVE ALL THE CASE OF THIS DOUGLAS C-47 AIRCRAFT THE PROFORMA INVOICE FOR WHICH (ATTACHED) AMOUNTS TO \$64,455.00 WHICH THE HAITIAN GOVERNMENT AGAIN NEITHER ORDERED NOR RECEIVED.

3. FURTHERMORE THE HAITIAN GOVERNMENT IS OBLIGED TO EMPHASIZE THE DEPLORABLE STATE OF MOST OF THE MATERIAL DELIVERED BY AEROTRADE DESPITE THE FACT THAT IT WAS PROVIDED IN THE CONTRACT THAT THESE ARTICLES SHOULD BE "NEW AND UNUSED". THIS IS WHY NO CERTIFICATE OF RECEIPT HAS EVER BEEN DELIVERED FOR THIS MATERIAL. THE GOVERNMENT STILL IS WAITING FOR EXPLANATIONS TO BE PROVIDED BY THE SELLER.

THIS SUCCINCT STATEMENT OF THE GRIEVANCES OF THE HAITIAN

GOVERNMENT AGAINST AEROTRADE CORPORATION AND MR. JAMES BYERS
AMPLY DEMONSTRATES THE IMMORAL CHARACTER OF THIS COMPANY AND
THE INANITY OF ITS CLAIMS.

IT SHOULD BE EMPHASIZED THAT THE HAITIAN GOVERNMENT WAS
NOT NOTIFIED IN THE USUAL LEGAL TIME PERIOD OF THE COMPLAINT
OF AEROTRADE CORPORATION AND THAT THE ORDER OF SEIZURE WAS
MADE BY DEFAULT.

IT FLOWS FROM ALL THAT HAS BEEN SAID ABOVE THAT THE
COMPLAINT OF AERTRADE IS NEITHER LEGITIMATE NOR WITH
FOUNDATION.

CONSEQUENTLY THE HAITIAN GOVERNMENT REQUESTS THAT THE
AMERICAN DEPARTMENT OF STATE RECOGNIZE ITS RIGHT TO
SOVEREIGN IMMUNITY IN CONFORMITY WITH:

A) THE UNIVERSALLY RECOGNIZED PRICIPLES OF INTER-
NATIONAL LAW WHICH DESIRE THAT THE PROPERTY OF A FOREIGN
GOVERNMENT ARE EXEMPT FROM ANY SEIZURE;
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B) THE CONSTANT PRACTICE OF THE DEPARTMENT OF STATE
IN THESE MATTERS WHEN IT IS A CAST OF ACTS OF "JURE IMPERII".
C) THE RECIPROCITY WHICH THE HAITIAN GOVERNMENT INTENDS
TO ACCORD TO THAT OF THE UNITED STATES IN ANY SIMILAR SITUATION.

ALSO, THE GOVERNMENT OF THE REPUBLIC OF HAITI WOULD BE
GRATEFUL TO THAT OF THE UNITED STATES IF IT WOULD KINDLY
INTERVENE AS SOON AS POSSIBLE TO PUT AN END TO THESE ABUSIVE
LAWSUITS OF WHICH THE HAITIAN STATE IS VICTIM BEFORE THE
DISTRICT COURT OF NEW YORK, THAT IS TO SAY, TO OBTAIN THE
ANNULMENT OF THE ORDER DATED AUGUST 21, 1973 AND ALSO TO
PREVENT ANY OTHER ACTION OF THE SAME SORT.

I TAKE THIS OCCASION TO RENEW MR. CHARGE D'AFFAIRES THE
ASSURANCES OF MY HIGH CONSIDERATION.

(SIGNED)
DR. ADRIEN RAYMOND
SECRETARY OF STATE
FOR FOREIGN AFFAIRS

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